IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
ABC UTILITIES SERVICES, INC., et al.,	§	
	§	**Administratively Consolidated under**
Debtors.	§	**Case No. 89-41420-BJH-7**
	§	
	§	
FRANK A. WOLFE, JR.,	§	
	§	
Plaintiff,	§	
	§	**Adversary No. 00-4118**
v.	§	
	§	
BRUCE A. BUDNER & ASSOCS., P.C.,	§	
	§	
Defendant.	§	
	§	

MEMORANDUM OPINION

Before the Court is the Rule 12(c) Motion for Judgment on the Pleadings of Defendants Bruce A. Budner, Individually, and Bruce A. Budner & Associates, P.C. and Brief in Support Thereof (the "Motion"). This Memorandum Opinion constitutes the Court's Findings of Fact and Conclusions of Law. FED. R. CIV. P. 52; FED. R. BANKR. P. 7052

I. Contentions of the Parties

Bruce A. Budner, individually and for Bruce A. Budner & Associates, P.C. (collectively, "Budner" or "Defendant"), contends that a judgment on the pleadings is warranted because Wolfe, individually, lacks standing to assert the claims set forth in the state court petition now before this Court by removal, and that those claims are barred by *res judicata* and collateral estoppel as a result of the prior orders of this Court approving certain settlements and Budner's

fees. Budner further contends that this lawsuit may be decided pursuant to a motion to dismiss under Federal Rule of Civil Procedure 12(c) because all relevant facts are found in the pleadings and court records. In a post-hearing brief, Budner suggests that the Motion be considered as one for summary judgment because of the exhibits and other evidence, including Plaintiff's affidavit, that were admitted by agreement of the parties at the hearing on the Motion.

Plaintiff contends that he has standing to bring the claims asserted in the Original Petition, that *res judicata* and collateral estoppel are not effective against the claims asserted, and that there are "substantial fact issues" which should be decided after a trial on the merits.

II. Factual and Procedural Background

The history of this adversary proceeding is tied to the somewhat arduous history of these bankruptcy cases. Although a full factual recitation is unnecessary, certain events are relevant to the Motion.

Plaintiff Frank A. Wolfe ("Wolfe" or "Plaintiff") was the principal and controlling shareholder of the three Debtors: ABC Utilities Services, Inc.; ABC Asphalt, Inc.; and Utilities Equipment Leasing Company, Inc. (collectively, the "ABC Entities" or the "Debtors"). In April 1989, Wolfe caused the ABC Entities to file for protection under Chapter 11 of the Bankruptcy Code. Subsequently, Joseph Colvin was appointed as the Chapter 11 Trustee for each of the ABC Entities and, after all three cases were converted to Chapter 7, the Chapter 7 Trustee.

Prior to their bankruptcy filings, the ABC Entities entered into a series of secured lease and finance transactions with ORIX Credit Alliance, Inc. ("OCAI"). During the bankruptcy cases OCAI was successful in defending itself against all claims asserted by the Debtors, in

securing relief from the automatic stay to execute on its liens, and in obtaining allowed claims against the Debtors' estates over the objections of the Debtors and Wolfe.

Wolfe believed that several of the Debtors' former attorneys had committed malpractice in connection with the Debtors' prosecution of claims against OCAI. The Trustee refused to bring those malpractice claims. Thus, in 1996, Wolfe sought, and obtained, permission from this Court to bring a lawsuit, on behalf of the Debtors, against several of the Debtors' former attorneys (the "Malpractice Suit"). *See* Order Granting Second Amended Motion for Order Permitting Creditor to Initiate Litigation (the "Litigation Order")(Def. App. at pp. 46-47)[1]. The basis for the Malpractice Suit was the contention that the Debtors' former attorneys had impermissible conflicts of interest with OCAI while representing the Debtors in proceedings against OCAI, and that the Debtors suffered damages as a result of these conflicts. *See* Motion to Approve Settlements and Application of Counsel for an Award of Professional Fees and Reimbursement of Expenses ("Settlement Motion")(Def. App. at pp. 55-150, 57-58).

The Litigation Order provided that Wolfe was "entitled to pursue litigation *on behalf of the estates of the Debtors* . . . on the condition that Wolfe pay all of the expenses of such litigation, the attorney that Wolfe employs to pursue such litigation accept such representation on a contingency basis, and that Wolfe indemnify the estates against any sanctions orders and

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[1]All pleadings or other documents cited to in this Memorandum Opinion are either (i) contained in an Appendix to Rule 12(c) Motion for Judgment on the Pleadings of Defendants Bruce A. Budner, Individually and Bruce A. Budner & Associates, P.C. and Brief in Support (hereinafter cited to as "Def. App."); (ii) a part of the Court's file in these cases (hereinafter cited to as "Docket No. _"); (iii) attached as an exhibit to Plaintiff's Response to Rule 12(c) Motion for Judgment on the Pleadings (hereinafter cited to as "Pl. Res. Exh.__"); or (iv) attached as an exhibit to Witness and Exhibit List of Orix Financial Services, Inc. for Hearing on Motion for Rule 60(b) Relief From Order Approving Bruce Budner's Motion to Approve Settlements (Orix Credit Alliance, Inc.), Docket No. 860 (hereinafter cited to as "Rule 60(b) Exh.__").

counterclaims." *See* Litigation Order (Def. App. at p. 47) (emphasis added). Budner agreed to represent the Debtors in the Malpractice Suit on the terms set forth in the Litigation Order and a Contingent Fee Agreement was executed by Budner and Wolfe. *See* Contingent Fee Agreement (Pl. Res. Exh. B). Budner filed the Malpractice Suit in Texas state court. *See* Plaintiffs' Original Petition (Rule 60(b) Exh. 35). The Debtors were the named plaintiffs in the Malpractice Suit. *See id.*

Although OCAI was not a party to the Malpractice Suit, the Debtors sought extensive discovery from OCAI, including certain documents OCAI believed to be confidential (the "OCAI Documents"). *See* Settlement Motion (Def. App. at pp. 58-59). Eventually, OCAI was ordered by the state court to produce certain documents under the protection of a confidentiality order. *See* Stipulation and Order of Confidentiality (the "Confidentiality Order")(Rule 60(b) Exh. 36). Among other things, the Confidentiality Order provided that the OCAI Documents were to be "used solely for the prosecution or defense of the claims asserted in the [Malpractice Suit] and shall not be used for any other purpose. . . ." *See id.* at p. 3. The Confidentiality Order further provided that it would "survive the termination of [the Malpractice Suit]" and that upon the termination of the Malpractice Suit, the parties were to "return to OCAI all documents produced by OCAI, including all copies, prints and other reproductions of such information." *See id.* at p. 4.

OCAI and the Debtors had continuing discovery disputes in the Malpractice Suit. *See* Settlement Motion (Def. App. at pp. 59, 61-62). While these discovery disputes were pending, the parties to the Malpractice Suit successfully mediated their disputes and in July 1998, a Compromise Settlement Agreement was executed by the parties, subject to this Court's approval

(the "Malpractice Settlement"). *See id.* at pp. 59, 125-47. As a result of the Malpractice Settlement, only one issue remained in the Malpractice Suit – the Debtors' motion for sanctions for discovery abuses against OCAI and to lift the protections of the Confidentiality Order. By letter agreement dated July 23,1998, OCAI and the Debtors agreed to settle their discovery disputes, subject again to this Court's approval (the "OCAI Settlement"). *See id.* at pp. 60, 148-50.

Budner, as counsel for the Debtors, submitted both of the settlement agreements (*i.e.*, the Malpractice Settlement and the OCAI Settlement) first to the state court, and then to this Court, for approval. *See generally* Settlement Motion (Def. App. at pp. 55-150.) The only response filed to the Settlement Motion in this Court came from Wolfe, who objected to the settlements "to the extent approval [of the settlements] would arguably bar him or any party in interest from seeking disclosure of [the OCAI Documents]." *See* Response of Frank A. Wolfe, Jr. to Bruce A. Budner's Motion to Approve Settlements (Def. App. at pp. 151-155, 152). The Settlement Motion was set for hearing on October 7, 1998.

At the October 7, 1998 hearing on the Settlement Motion, the Court found that while Wolfe was objecting to the OCAI Settlement, he had no objection to the Malpractice Settlement. *See* Order Partially Approving Settlements and Application of Special Counsel for an Award of Professional Fees and Reimbursement for Expenses (the "Malpractice Settlement Order")(Def. App. at pp. 156-157). Thus, the Court approved the Malpractice Settlement and "reserved for later determination" the OCAI Settlement. *See id.* at 157. The Malpractice Settlement Order also allowed Budner's fees for his representation of the Debtors in the Malpractice Suit. *See id.* Wolfe agreed to the entry of the Malpractice Settlement Order. *See id*.

On September 28, 1999, this Court considered the OCAI Settlement and Wolfe's objections to that settlement. On October 22, 1999, this Court entered an order approving the OCAI Settlement, finding that "the settlement agreement between debtors and Orix Credit Alliance, Inc. is fair and equitable and in the best interest of the bankruptcy estate." *See* Order Approving Sanctions Settlement with Orix (the "OCAI Settlement Order")(Def. App. at p. 158).

On November 1, 1999, Wolfe filed his Motion for Additional Findings of Fact and asked the Court to "make an explicit finding of fact that the parties agreed that the records could be made available by the Bankruptcy Court, free of the restrictions of the confidentiality order, and that the Court has done so by its order denying OCAI's motion to quash the deposition." *See* Motion for Additional Findings of Fact (Docket No. 810) at p. 2. Wolfe's motion for additional findings was denied by Order entered on February 11, 2000. *See* Order Denying Motion of Frank A. Wolfe, Jr. for Additional Findings of Fact (the "Order Denying Additional Findings")(Docket No. 823). Wolfe did not appeal the Order Denying Additional Findings. Thus, the OCAI Settlement Order became final and binding upon the parties.

On July 11, 2000, Plaintiff filed the instant action in Texas state court, which was subsequently removed to this Court. The Court denied Plaintiff's motion to remand at a hearing held on November 8, 2000. Plaintiff complains of certain acts of negligence, fraud, deceptive trade practices, and breach of fiduciary duty allegedly surrounding Budner's conduct in the Malpractice Suit – specifically his conduct in negotiating and agreeing to the OCAI Settlement. Plaintiff complains of Budner's conduct in Plaintiff's *individual* capacity. *See* Plaintiff's Original Petition (Def. App. at pp. 4-11).

III. Analysis and Authority

A. Standard for Granting the Motion

Federal Rule of Civil Procedure 12(c), made applicable by Federal Rule of Bankruptcy Procedure 7012, provides that after the pleadings are closed, any party "may move for judgment on the pleadings." FED. R. CIV. P. 12. The Rule further provides that "[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. . . ." *See id.*

The standard for granting relief under Rule 12(c) is similar to that of a motion for summary judgment under Rule 56 – such relief is appropriate where there is no issue of material fact, and where the pleadings show that the moving party is entitled to a judgment as a matter of law. *See Perez v. Brown & Williamson Tobacco Corp.*, 967 F. Supp. 920, 924 (S.D. Tex. 1997) ("A Rule 12(c) motion is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts. Like a motion for summary judgment, a 12(c) motion should be granted only if there is no issue of material fact and if the pleadings show that the moving parties are entitled to prevail as a matter of law."); *Smith v. McMullen*, 589 F. Supp. 642, 644 (S.D. Tex. 1984) ("The restrictive standard of review applicable to a Rule 12(c) motion is well-established: a motion for judgment on the pleadings, like a motion for summary judgment, should be granted only if there is no issue of material fact, and if the pleadings show that the moving party is entitled to prevail as a matter of law.").

Budner filed the Defendants' Appendix in support of the Motion. That appendix included a number of pleadings, documents, and orders from the state court and these bankruptcy cases. Copies of an Affidavit of Frank A. Wolfe, Jr. in Support of His Response to Budner's Rule 12(c) Motion for Judgment on the Pleadings (the "Wolfe Affidavit") and the Contingent Fee Agreement were attached as Exhibits A and B, respectively, to Plaintiff's Response. The parties agreed that the Court should consider all of these exhibits and the Wolfe Affidavit in connection with its disposition of the Motion.

Rule 12(c) is clear as to the effect of the introduction of matters outside the pleadings. In such a case, "the motion *shall* be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56." *See* FED. R. CIV. P. 12(c) (emphasis added). Thus, the Court will convert the Motion to a Rule 56 motion for summary judgment. Since Budner agrees that the Motion is properly treated as one for summary judgment, *see* Defendants' Supplemental Post-Hearing Brief in Support of Motion for Judgment ("Defendants' Post-Hearing Brief") at p. 4, and Plaintiff was permitted to offer the Wolfe Affidavit and the Contingent Fee Agreement in opposition to the Motion, the Motion is properly before the Court for decision at this time.

B. The Malpractice Suit

The Court previously concluded that the claims to be asserted in the Malpractice Suit belonged to the Debtors' estates, not Wolfe individually. In deciding to grant Wolfe's motion for authority to initiate litigation on behalf of the Debtors' estates, the Court analyzed the controlling precedent, *Louisiana World Exposition v. Federal Insurance Co.*, 858 F.2d 233 (5th Cir. 1988),

reh'g den., 864 F.2d 1147 (5th Cir. 1989), and concluded that all three factors articulated in *Louisiana World Exposition* were satisfied: (1) the claims that Wolfe sought to bring on behalf of the Debtors' estates were colorable; (2) the claims would be brought on behalf of the Debtors' estates, and not Wolfe personally; and (3) the Trustee's refusal to act was not justified. *See* Findings of Fact and Conclusions of Law entered on February 5, 1996 (Docket No. 640). Because Wolfe was willing to pay all of the expenses associated with the Malpractice Suit, the Court concluded that "[w]ith respect to out-of-pocket costs to the estates, there is no down side or negative effect at all. Wolfe is willing to indemnify the estate against the possibility of sanctions and any counterclaims lodged against it. If there is a recovery in the proposed litigation, the beneficiaries will be the creditors of the Debtors' estates. If, on the other hand, the litigation is unsuccessful, the estates will not suffer a pecuniary loss." *Id*. at p. 7. The Litigation Order specifically provided that Wolfe was "entitled to pursue litigation *on behalf of the estates of the Debtors* . . . on the condition that Wolfe pay all of the expenses of such litigation, the attorney that Wolfe employs to pursue such litigation accept such representation on a contingency basis, and that Wolfe indemnify the estates against any sanctions orders and counterclaims." *See* Litigation Order (Def. App. at p. 47)(emphasis added).

In seeking authority to bring the Malpractice Suit, Wolfe recognized that the claims were not his, individually, to bring. Specifically, Wolfe's motion was entitled "Motion for Order Permitting Creditor to Initiate Litigation *in the Name of the Trustee* and Brief in Support Thereof." *See* Motion for Order Permitting Creditor to Institute Litigation in the Name of the Trustee and Brief in Support Thereof (Def. App. at pp. 12-45)(emphasis added). Not only did the title of the motion recognize that these claims belonged to the Debtors' estates, the motion

specifically stated that "Wolfe requests that this Court enter an order which permits Wolfe to pursue the litigation on behalf of the Debtors' estate." *See id.* at p.18. The Court again concludes that the claims asserted in the Malpractice Suit were estate claims, not claims of Wolfe individually.

Wolfe contends that "[t]he contract I signed shows that I personally formed an attorney-client relationship with Bruce A. Budner and his law firm." *See* Wolfe Affidavit (Pl. Res. Exh. A at ¶ 2). Wolfe essentially contends that Budner was his counsel because he signed the Contingent Fee Agreement in two capacities – individually and as Court-appointed representative. *See* Contingent Fee Agreement (Pl. Res. Exh. B at p. 2).

The Court disagrees with Wolfe's interpretation of the Contingent Fee Agreement. The Contingent Fee Agreement provides that "[t]his Agreement is between the Estates of ABC Utilities Services, Inc., ABC Asphalt, Inc., and Utilities Equipment Leasing Company, Inc., by and through their court-appointed representative, Frank A. Wolfe, Jr., **("Client")** and Johnson & Budner, a Professional Corporation **("Attorneys")**." *See* Contingent Fee Agreement (Pl. Res. Exh. B at p. 1)(emphasis in original). The Contingent Fee Agreement goes on to provide that "Client retains and employs Attorneys . . . Client agrees to pay to Attorneys a contingent fee . . . Client hereby sells, conveys, and assigns to Attorneys an interest to the extent herein indicated . . . Client understands that this agreement does not cover defense of claims asserted against Client . . . Client understands the uncertainty of contested legal matters, and acknowledges that Attorneys made no representations or guarantees regarding the outcome . . . ." *See id.* at pp. 1-2.

Pursuant to the terms of the Contingent Fee Agreement, Budner agreed to represent the Debtors' estates, not Wolfe individually. Wolfe signed the Contingent Fee Agreement

individually because the Court required him, in his individual capacity, to pay the expenses of the litigation and to indemnify the estates from sanctions and counterclaims. *See* Litigation Order (Def. App. at p. 47). Where Wolfe undertakes individual obligations under the Contingent Fee Agreement, the agreement refers to him by name, not as the "Client." *See, e.g.* Contingent Fee Agreement (Pl. Res. Exh. B at ¶ 3)("Expenses shall be paid by Frank A. Wolfe, Jr., as incurred."). Wolfe signed the Contingent Fee Agreement in his individual capacity to reflect his agreement to the personal obligations he was undertaking in connection with the Malpractice Suit. *See id*.

When the Malpractice Suit was filed, the Debtors were the named plaintiffs. *See* Plaintiffs' Original Petition (Rule 60(b) Exh. 35). Wolfe was not a named plaintiff in the Malpractice Suit. *See id*. Wolfe hired separate counsel and sought leave to intervene in the Malpractice Suit on December 3, 1998 in connection with the state court's consideration of the OCAI Settlement. *See* Intervention of Frank A. Wolfe, Jr. and Motion to Dissolve Confidentiality Order (Rule 60(b) Exh. 37).

The state court approved the Malpractice Settlement on July 24, 1998. This Court approved the Malpractice Settlement, and awarded Budner those fees to which he was entitled pursuant to the Litigation Order and the Contingent Fee Agreement, by the entry of the Malpractice Settlement Order on October 7, 1998. *See* Malpractice Settlement Order (Def. App. at pp. 156-57). Wolfe approved the Malpractice Settlement Order "as to form and substance." *See id*. at p. 157.

In summary, the Court concludes that (i) the claims asserted in the Malpractice Suit belonged to the Debtors' estates; (ii) the only plaintiffs named in the Malpractice Suit were the

Debtors' estates; (iii) when Wolfe sought to appear personally in the Malpractice Suit, he did so through his own counsel; (iv) Wolfe had no objection to the Malpractice Settlement or to the payment of fees to Budner for his representation of the Debtors in connection with the Malpractice Suit; and (v) Wolfe does not have standing to pursue any malpractice claims against Budner in connection with Budner's representation of the Debtors' estates in the prosecution of their claims against their former attorneys. These conclusions do not resolve the suit, however.

C. The OCAI Settlement

We now get to the more difficult issue. The Court concludes from a careful reading of the now removed Original Petition that Wolfe is not suing Budner for malpractice for his handling of the Malpractice Suit.[2] Rather, Wolfe is suing Budner for malpractice in connection with his negotiation of a settlement of the motions that were pending against OCAI in the Malpractice Suit for sanctions and to lift the confidentiality protections surrounding the OCAI Documents. *See generally* Plaintiff's Original Petition (Def. App. at pp. 4-11). It is in connection with those activities that Wolfe contends that he had an attorney-client relationship with Budner, and that Budner's conduct in settling those matters, instead of litigating them, constituted negligence, a violation of the Deceptive Trade Practices Act, breach of fiduciary duty, and fraud. *See id.*

The disputes with OCAI arose in connection with non-party discovery of documents thought to be material to the Debtors' successful prosecution of their claims against their former

[2]While the petition is not a model of clarity, Wolfe recites the settlements obtained by Budner with the Debtors' former attorneys and that he approved of those settlements – "[o]n June 17,1998, [Budner] recovered $300,000.00 from the remaining Defendants in malpractice case with [my] approval . . . ." *See* Plaintiff's Original Petition (Def. App. at pp. 4-11 (¶ 11)). Wolfe then goes on to complain of Budner's conduct in connection with the sanctions and confidentiality motions. *Id.* at ¶¶ 11 - 14.

attorneys in the Malpractice Suit. On behalf of the Debtors, Budner sought discovery from OCAI and to compel the production of the OCAI Documents. *See* Settlement Motion (Def. App. at pp. 5-6, 7-8). As noted previously, OCAI was ordered by the state court to produce the OCAI Documents under the protection of the Confidentiality Order. *See* Confidentiality Order (Rule 60(b) Exh. 36). OCAI and the Debtors had continuing discovery disputes. *See* Settlement Motion (Def. App. at pp. 4-5, 7-8). While these discovery disputes were pending, the Malpractice Settlement was agreed to by the parties. *See id*. at pp. 59, 125-147.

Wolfe contends that once the Malpractice Settlement was agreed to, Budner "agreed to file motion to lift confidentiality agreement pertaining to certain documents obtained from third party Defendants Orix Credit Alliance." *See* Plaintiff's Original Petition (Def. App. at pp. 4-11 (¶ 11)).[3] Wolfe further alleges that Budner "filed motion to lift confidentiality and to recover sanctions June, 1998 in the 141st State Court;" *see id.* at ¶ 12; that "[o]n July 23, 1998, [Budner] entered into a settlement agreement with Third Party Defendants, Orix, against [Wolfe's] directions and wishes and did not furnish [him] a copy of the agreement"; *id* at ¶ 13; and that "[o]n July 24, 1998, [Budner] testified in 141st District Court of Texas that [Wolfe] was not in agreement with settlement but that he had obtained Bankruptcy Trustee, Joseph Colvin's permission to do so. [Wolfe] testified that he was against because it would do irreparable harm to the estate and himself." *Id.* at ¶ 14.

The threshold issue in connection with these claims is whether Wolfe had an attorney-client relationship with Budner with respect to the issues surrounding the settlement of the

[3]There is no evidence before the Court that OCAI was a third party defendant in the Malpractice Suit.

discovery disputes with OCAI in the Malpractice Suit. The Contingent Fee Agreement does not specifically address this issue.

The Wolfe Affidavit states, *inter alia*, that:

> I personally relied on the Defendants for legal advice and received legal advice from them about questions that were personal to me. I disclosed confidential personal information and expected them to maintain my confidences.
>
> Mr. Budner was aware of my personal interest in the discovery we sought to obtain from ORIX Credit Alliance, Inc. ("OCAI") in the 141st District Court. To the best of my knowledge, my interest as a creditor and interested party in the bankruptcy case was not in conflict with the interest of the debtors in the litigation. I have long contended, individually and as an interested person in the bankruptcy case, that OCAI committed bankruptcy fraud and deliberately miscalculated its claim in the bankruptcy proceeding. To the extent that the records that could be produced in the malpractice litigation could prove my contention, I was personally interested in obtaining those records. I wanted Budner to preserve the right of all interested parties, myself included, to review and use the documents in any form, if legally possible. I relied on Mr. Budner to advise me how the right to use and retain the documents could be preserved, consistent with my responsibilities as a representative of the bankruptcy estate.
>
> On the date of the hearing in the 141st District court when Budner sought approval of a settlement with OCAI, which appeared to me to jeopardize the right of any person interested in the bankruptcy case to review or retain the records produced by OCAI, I instructed Bruce Budner to withdraw the agreement. I believed that the agreement impaired my individual interest, as well as the interest of the estate. Budner refused to follow my specific instructions that I gave both in my capacity as a representative of the estate and in my individual capacity. I believed that I had an attorney-client relationship with Budner and that he was under an obligation to follow my reasonable instructions.

See Wolfe Affidavit (Pl. Res. Exh. A, at ¶¶ 3 - 4).

The Wolfe Affidavit raises an issue of material fact with respect to Wolfe's personal relationship with Budner. As a result, neither a motion under Rule 12 nor one under Rule 56 is an appropriate means of resolving this lawsuit. *See Perez,* 967 F. Supp. at 924 ("A Rule 12(c) motion is designed to dispose of cases where the material facts are not in dispute . . . ."); FED. R.

CIV. 56 ("The judgment sought shall be rendered forthwith if . . . there is no genuine dispute as to any material fact . . . ."). Therefore, the Court will deny the Motion.

However, because the issue of whether Wolfe, individually, had an attorney-client relationship with Budner could dispose of this suit in its entirety (*i.e.*, Budner cannot be found liable to Wolfe unless he had an attorney-client relationship with him), a separate trial of that issue is appropriate. Not only will a separate trial of this issue expedite the potential resolution of this lawsuit, it will be economical for the parties and will serve judicial economy. *See* FED. R. CIV. P. 42(b) ("The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial . . . of any separate issue . . . ."); *see also Brown v. Southeastern Pa. Transp. Auth. (In re Paoli RR Yard PCB Litig),* 113 F.3d 444, 452 n.5 (3rd Cir. 1997) (affirming the District Court's *sua sponte* bifurcation of issues of causation and negligence where resolution of the causation issues "obviated the need for a trial on [Defendants'] liability, which undoubtedly would have taken months and would have involved issues more complicated" than causation alone); *Saxion v. Titan-C-Manufacturing, Inc.*, 86 F.3d 553, 556 (6th Cir. 1996) ("A district court may bifurcate a trial 'in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy.' Only one of these criteria need be met to justify bifurcation. The language of Rule 42(b) places the decision to bifurcate within the discretion of the district court. The rule clearly suggests that a court may bifurcate a trial on its own motion.") (citations omitted).

Thus, the Court will order separate trials to take place on the issues of (1) whether Wolfe, individually, had an attorney-client relationship with Budner in connection with the OCAI

Documents and the OCAI Settlement ("Phase I"), and (2) all remaining issues, including liability, causation, and damages ("Phase II"). If the Phase I trial results in a judgment for Wolfe, the Court will schedule a trial for the Phase II issues. If the Phase I trial results in a judgment for Budner, no Phase II trial will be necessary.

Appropriate Orders will be entered separately.

Signed this ____ day of December, 2000.

Barbara J. Houser
United States Bankruptcy Judge